

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Those Certain Companies and Those Certain Underwriters at Lloyds, London, Subscribing Severally but not Jointly to Policy of Insurance Certificate Number NA3471501, as Subrogors of David Morris International Limited, Plaintiff, v. 6.21 CARAT DIAMOND, Defendant-in-rem, Jay Waldmann, Claimant-Defendant.	<u>Declaration of Sarah Anne Kutner</u> Case No. 08-CV-2006 (SHS)
---	--

SARAH ANNE KUTNER, an attorney duly admitted to practice before this Court and the Courts of the State of New York, declares the following under penalty of perjury:

1. I am duly admitted to practice law before the United States District Court for the Southern District of New York.
2. I am an associate with the law firm of Nixon Peabody LLP, counsel for plaintiffs Those Certain Companies and Those Certain Underwriters at Lloyds, London, Subscribing Severally but not Jointly to Policy of Insurance Certificate Number NA3471501, as Subrogors of David Morris International Limited (the "Insurers"). As such, I am fully familiar with the facts of this matter set forth herein based on my review of the file and handing of this case.
3. I submit this Declaration, together with the affidavit of Les Turner, accompanying exhibits and Memorandum of Law, in support of the Insurers' motion, pursuant to Rule 55 of the Federal Rules of Civil Procedure and Rules 55.1 and 55.2 (a) of the Civil Rules for the Southern

and Eastern Districts of New York for a declaratory judgment and order on default against defendant Jay Waldmann.

4. Mr. Waldmann has failed to respond to the complaint within the time required by Rule 12(a) of the Federal Rules of Civil Procedure (“FRCP”). As such, he is in default in this action, as shown by the Clerk’s certificate of default, attached as **Exhibit S**.

5. Accordingly, it is respectfully submitted that this Court grant a judgment on default against the defendant: (1) Declaring that the defendant has no right, title or interest in or to the Diamond, and that all right, title and interest in and to the Diamond is vested exclusively in the Insurers; (2) Ordering that the Diamond be turned over immediately by GIA to the Insurers, the rightful owners of the Diamond as subrogors of David Morris; (3) Imposing a constructive trust on the Diamond; (4) Ordering the defendant to produce, in writing, any and all information in his knowledge or possession regarding the identity of the person from whom or the entity from which he purchased the Diamond; (5) Awarding the Insurers the costs and disbursements of this action; and (6) Awarding the Insurers such other and further relief as the Court deems just and proper.

6. This action was commenced by the Insurers on February 28, 2008, seeking, among other things, a declaration that the Insurers possessed superior right and title to the Diamond as against the defendant as subrogors of David Morris. *See* complaint at Docket Entry #1.

7. The Diamond is being held by GIA with the consent of both the Insurers and Mr. Waldmann, through his attorney, Robert L. Tucker Esq. of Turner & Latifi, LLP. *See* e-mail dated June 25, 2007, attached as **Exhibit T**.

8. The Court has *in rem* jurisdiction over the Diamond because it is being held by GIA at their New York location, upon information at believe at 589 Fifth Avenue, New York,

NY 10017, until they are presented with an order from a court or similar authority directing to whom the Diamond is to be given as the rightful owner. *See* **Exhibit T**.

9. GIA has not conveyed a claim of ownership to the Diamond to the Insurers or this firm. Upon information and belief, GIA does not intend to make such a claim and is simply holding the Diamond until a court or similar authority decides who is its rightful owner, at which time it will surrender the Diamond to that owner.

10. Therefore, the parties to this action have constructive possession of the Diamond, and the Court has *in rem* jurisdiction over it, giving the Court the right to render a judgment as to its rightful owner.

11. Mr. Waldmann was provided the summons and complaint in this action through Mr. Tucker. *See* e-mail dated March 4, 2008, attached as **Exhibit M** (attachments omitted). Mr. Tucker previously identified himself to this firm as Mr. Waldmann's personal attorney, and has been corresponding with this firm, and with GIA and its attorneys, on Mr. Waldmann's behalf from June 2007 through the present in connection with Mr. Waldmann's claim to the Diamond. *See, e.g.*, email dated June 25, 2007, attached as **Exhibit L**.

12. Mr. Tucker responded that he did not have authority to accept service on behalf of Mr. Waldmann. *See* reply e-mail attached as **Exhibit N**.

13. Service was also made on Mr. Waldmann by mail methods. Mr. Waldmann was provided with the summons and complaint in this action through regular mail, both to his Southampton address, and to his address in Germany. *See* letter dated March 5, 2008, attached as **Exhibit O** (attachments omitted).

14. Mr. Tucker admitted that Mr. Waldmann did in fact receive the correspondence sent to him in Germany. *See* reply e-mail dated April 10, 2008, attached as **Exhibit P**.

15. Mr. Waldmann was also served through his agent Martin M. Bell, of Bell & Company LLP at 350 5th Avenue, Suite 7412, New York, New York. *See Exhibit Q.* Bell & Company LLP is listed on the New York Department of State, Division of Corporations website as the agent for service of process for Mr. Waldmann's corporation, Waldmann Inc. *Id.* Mr. Bell stated at the time of service that he was authorized to accept service on Mr. Waldmann's behalf. *Id.*

16. Mr. Tucker was also notified that the initial conference, originally scheduled for April 11, was adjourned, and that the Insurers intended to file a default motion against Mr. Waldmann. *See* e-mail dated April 10, 2008, attached as **Exhibit R**.

17. Mr. Waldmann has failed and refused to answer the complaint in this action, despite the many notices and opportunities to respond. Indeed, by all appearances he has left the country and abandoned any claims to the Diamond.

18. Mr. Waldmann's time to respond to the complaint has now expired under FRCP 12(a). As the Insurers have shown that they have superior right, title and interest in the Diamond as subrogors of David Morris, the Insurers respectfully submit that they are entitled to a declaratory judgment and order on default against Mr. Waldmann.

WHEREFORE, the Insurers respectfully request that this Court grant a declaratory judgment and order on default against the defendant: (1) Declaring that the defendant has no right, title or interest in or to the Diamond, and that all right, title and interest in and to the Diamond is vested exclusively in the Insurers; (2) Ordering that the Diamond be turned over immediately by GIA to the Insurers, the rightful owners of the Diamond as subrogors of David Morris; (3) Imposing a constructive trust on the Diamond; (4) Ordering the defendant to produce in writing to the Insurers any and all information in his knowledge or possession regarding the

identity of the person from whom or the entity from which he purchased the Diamond; (5) Awarding the Insurers the costs and disbursements of this action; and (6) Awarding the Insurers such other and further relief as the Court deems just and proper.

Dated: Jericho, New York
May 9, 2008



Sarah Anne Kutner (SK-6516)

10987042.1

Kutner, Sarah Anne

From: Robert Tucker [rtucker@tuckerlatifi.com]
Sent: Monday, June 25, 2007 8:21 PM
To: capricci.barush@dlapiper.com
Cc: Kutner, Sarah Anne
Subject: 6.21 Carat Diamond Jay Waldmann & David Morris International Limited
Attachments: Waldmann-S Cutner ltr 6-14-07.pdf

Dear Capricci: In connection with the above-referenced matter and your firm's representation of GIA, please be advised that Sarah Kutner of Nixon Peabody, counsel for the underwriters who insured David Morris International Limited ("Morris"), and I have recently entered into negotiations to resolve the dispute over the rightful ownership of the 6.21 Carat Diamond first brought to your client for evaluation by Mr. Benny Sofer (on behalf of Mr. Waldmann) over a year ago. As demanded by Ms. Kutner in her attached letter of June 14th, we kindly request that the referenced diamond be maintained by GIA for safe keeping until this matter can be resolved.

To date, this firm has not been provided with any proof or substantiation to evidence the claim that the referenced diamond is the property of Morris and/or his underwriters.

Thank you, Robert Tucker

Robert L. Tucker, Esq.
TUCKER & LATIFI, LLP
160 East 84th Street
New York, NY 10028
212-472-6262
212-744-6509 fax
917-741-1414 cell
www.TuckerLatifi.com

Kutner, Sarah Anne

From: Kutner, Sarah Anne
Sent: Tuesday, March 04, 2008 4:58 PM
To: Robert Tucker
Subject: 6.21 Carat Diamond
Attachments: FIRM_DM-10930463-v1-Resolute_David_Morris_-_pleadings.PDF

Robert,

I have attached a copy of the pleadings that were recently filed in the Southern District of New York. Please let us know whether you will accept service on behalf of Mr. Waldmann. Thank you.

Sarah

Sarah Anne Kutner

Associate

NIXON PEABODY

50 Jericho Quadrangle
Suite 300
Jericho, NY 11753-2728
P (516) 832-7561
C (516) 526-5233
F (866) 530-9407
skutner@nixonpeabody.com
www.nixonpeabody.com

Please consider the environment before printing this e-mail

The preceding e-mail message contains information that is confidential and may be protected by the attorney/client or other applicable privileges. The information is intended to be conveyed only to the designated recipient(s) of the message. If you believe that you are not an intended recipient of this message, please notify the sender at (516) 832-7561. Unauthorized use, dissemination, distribution or reproduction of this message by other than the intended recipient is strictly prohibited and may be unlawful.

4/22/2008

Kutner, Sarah Anne

From: Robert Tucker [rtucker@tuckerlatifi.com]
Sent: Tuesday, March 04, 2008 6:18 PM
To: Kutner, Sarah Anne
Subject: RE: 6.21 Carat Diamond

Dear Sarah: Mr. Waldmann lives in Düsseldorf, Germany and we do not have any authority to accept service on his behalf. I owe your firm an Affidavit of Mr. Waldmann regarding the facts of his purchase of the stone in question.

Best regards, Robert

Robert L. Tucker, Esq.
TUCKER & LATIFI, LLP
160 East 84th Street
New York, NY 10028
212-472-6262
212-744-6509 fax
917-741-1414 cell
www.TuckerLatifi.com

From: Kutner, Sarah Anne [mailto:skutner@nixonpeabody.com]
Sent: Tuesday, March 04, 2008 4:58 PM
To: Robert Tucker
Subject: 6.21 Carat Diamond

Robert,

I have attached a copy of the pleadings that were recently filed in the Southern District of New York. Please let us know whether you will accept service on behalf of Mr. Waldmann. Thank you.

Sarah

Sarah Anne Kutner
Associate

NIXON PEABODY

50 Jericho Quadrangle
Suite 300
Jericho, NY 11753-2728
P (516) 832-7561
C (516) 526-5233
F (866) 530-9407
skutner@nixonpeabody.com
www.nixonpeabody.com

4/22/2008

CONFIDENTIAL - Please do not be retransmitted before printing to email

The preceding e-mail message contains information that is confidential and may be protected by the attorney/client or other applicable privileges. The information is intended to be conveyed only to the designated recipient(s) of the message. If you believe that you are not an intended recipient of this message, please notify the sender at (516) 832-7561. Unauthorized use, dissemination, distribution or reproduction of this message by other than the intended recipient is strictly prohibited and may be unlawful.

NIXON PEABODY^{LLP}
ATTORNEYS AT LAW

50 Jericho Quadrangle, Suite 300
Jericho, New York 11753
(516) 832-7500
Fax: (516) 832-7555

Sarah Anne Kutner
Direct Dial: (516) 832-7561
Direct Fax: (866) 530-9407
E-Mail: skutner@nixonpeabody.com

March 5, 2008

By Regular Mail

Jindrich Waldmann
c/o Waldmann Inc.
25 Main Street
Southampton, New York

Jindrich Waldmann
Scheurenstr 7
40215 Düsseldorf
Germany

Re: 6.21 Carat Diamond – Laser Registry GIA 11326214 and 14592676

Dear Mr. Waldmann,

I have enclosed copies of an declaratory judgment action that was recently filed in the Southern District of New York seeking a declaration as to the rightful ownership of the 6.21 carat diamond currently being held by the Gemological Institute of America ("GIA") in New York. Clearly we cannot properly serve you with these papers when you are outside New York, and as you reside in Germany, service is difficult. However, we believe that it is in your best interest to participate in this litigation, as GIA will not release the diamond at this point absent a court order instructing it to do so. Therefore, if you wish to participate in order for the court to make a determination as to the diamond's ownership, please designate an agent in New York to accept service on your behalf so that this action can proceed.

Thank you for your time and attention to this matter.

Sincerely,



Sarah Anne Kutner

10633951.1

10930679

Kutner, Sarah Anne

From: Robert Tucker [rtucker@tuckerlatifi.com]
Sent: Thursday, April 10, 2008 5:50 PM
To: Kutner, Sarah Anne
Subject: RE: 6.21 Carat Diamond

Sarah: You have to serve him first before you can file a Motion for Default Judgment or have a Clerk's Certificate issued. He faxed me a letter from Germany in which you acknowledged that he HAS NOT been served. Let's set up a meeting next week (Monday to Thursday anytime at your office) to discuss and I will go through what his Affidavit would say. Robert

Robert L. Tucker, Esq.
TUCKER & LATIFI, LLP
160 East 84th Street
New York, NY 10028
212-472-6262
212-744-6509 fax
917-741-1414 cell
www.TuckerLatifi.com

From: Kutner, Sarah Anne [mailto:skutner@nixonpeabody.com]
Sent: Thursday, April 10, 2008 5:47 PM
To: Robert Tucker
Subject: RE: 6.21 Carat Diamond

Robert,

You may or may not know that an intial conference was scheduled to be held in the action that was filed against Mr. Waldmann in the Southern District of New York. I have adjourned the conference in the hopes that Mr. Waldmann will choose to participate in this litigation so that we can finally resolve this dispute. If Mr. Waldmann does not answer the complaint by April 25, I will be filing a default motion for which Judge Stein set a return date of May 9. I tell you this as a good faith effort to give Mr. Waldmann notice of these proceedings, as I do not have his contact information. I am mindful that you have already indicated that you do not have the authority to accept service on his behalf and have not made an appearance on his behalf.

Thank you for your time and courtesy,
Sarah

Sarah Anne Kutner
Associate

NIXON PEABODY

50 Jericho Quadrangle
Suite 300
Jericho, NY 11753-2728
P (516) 832-7561
C (516) 526-5233
F (866) 530-9407

4/23/2008

skutner@nixonpeabody.com
www.nixonpeabody.com

The preceding e-mail message contains information that is confidential and may be protected by the attorney/client or other applicable privileges. The information is intended to be conveyed only to the designated recipient(s) of the message. If you believe that you are not an intended recipient of this message, please notify the sender at (516) 832-7561. Unauthorized use, dissemination, distribution or reproduction of this message by other than the intended recipient is strictly prohibited and may be unlawful.

From: Robert Tucker [mailto:rtucker@tuckerlatifi.com]
Sent: Tuesday, March 04, 2008 6:18 PM
To: Kutner, Sarah Anne
Subject: RE: 6.21 Carat Diamond

Dear Sarah: Mr. Waldmann lives in Düsseldorf, Germany and we do not have any authority to accept service on his behalf. I owe your firm an Affidavit of Mr. Waldmann regarding the facts of his purchase of the stone in question.

Best regards, Robert

Robert L. Tucker, Esq.
TUCKER & LATIFI, LLP
160 East 84th Street
New York, NY 10028
212-472-6262
212-744-6509 fax
917-741-1414 cell
www.TuckerLatifi.com

From: Kutner, Sarah Anne [mailto:skutner@nixonpeabody.com]
Sent: Tuesday, March 04, 2008 4:58 PM
To: Robert Tucker
Subject: 6.21 Carat Diamond

Robert,

I have attached a copy of the pleadings that were recently filed in the Southern District of New York. Please let us know whether you will accept service on behalf of Mr. Waldmann. Thank you.

Sarah

Sarah Anne Kutner
Associate

NIXON PEABODY

50 Jericho Quadrangle

4/23/2008

Suite 300
Jericho, NY 11753-2728
P (516) 832-7561
C (516) 526-5233
F (866) 530-9407
skutner@nixonpeabody.com
www.nixonpeabody.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000
1001
1002
1003
1004
1005
1006
1007
1008
1009
1010
1011
1012
1013
1014
1015
1016
1017
1018
1019
1020
1021
1022
1023
1024
1025
1026
1027
1028
1029
1030
1031
1032
1033
1034
1035
1036
1037
1038
1039
1040
1041
1042
1043
1044
1045
1046
1047
1048
1049
1050
1051
1052
1053
1054
1055
1056
1057
1058
1059
1060
1061
1062
1063
1064
1065
1066
1067
1068
1069
1070
1071
1072
1073
1074
1075
1076
1077
1078
1079
1080
1081
1082
1083
1084
1085
1086
1087
1088
1089
1090
1091
1092
1093
1094
1095
1096
1097
1098
1099
1100
1101
1102
1103
1104
1105
1106
1107
1108
1109
1110
1111
1112
1113
1114
1115
1116
1117
1118
1119
1120
1121
1122
1123
1124
1125
1126
1127
1128
1129
1130
1131
1132
1133
1134
1135
1136
1137
1138
1139
1140
1141
1142
1143
1144
1145
1146
1147
1148
1149
1150
1151
1152
1153
1154
1155
1156
1157
1158
1159
1160
1161
1162
1163
1164
1165
1166
1167
1168
1169
1170
1171
1172
1173
1174
1175
1176
1177
1178
1179
1180
1181
1182
1183
1184
1185
1186
1187
1188
1189
1190
1191
1192
1193
1194
1195
1196
1197
1198
1199
1200
1201
1202
1203
1204
1205
1206
1207
1208
1209
1210
1211
1212
1213
1214
1215
1216
1217
1218
1219
1220
1221
1222
1223
1224
1225
1226
1227
1228
1229
1230
1231
1232
1233
1234
1235
1236
1237
1238
1239
1240
1241
1242
1243
1244
1245
1246
1247
1248
1249
1250
1251
1252
1253
1254
1255
1256
1257
1258
1259
1260
1261
1262
1263
1264
1265
1266
1267
1268
1269
1270
1271
1272
1273
1274
1275
1276
1277
1278
1279
1280
1281
1282
1283
1284
1285
1286
1287
1288
1289
1290
1291
1292
1293
1294
1295
1296
1297
1298
1299
1300
1301
1302
1303
1304
1305
1306
1307
1308
1309
1310
1311
1312
1313
1314
1315
1316
1317
1318
1319
1320
1321
1322
1323
1324
1325
1326
1327
1328
1329
1330
1331
1332
1333
1334
1335
1336
1337
1338
1339
1340
1341
1342
1343
1344
1345
1346
1347
1348
1349
1350
1351
1352
1353
1354
1355
1356
1357
1358
1359
1360
1361
1362
1363
1364
1365
1366
1367
1368
1369
1370
1371
1372
1373
1374
1375
1376
1377
1378
1379
1380
1381
1382
1383
1384
1385
1386
1387
1388
1389
1390
1391
1392
1393
1394
1395
1396
1397
1398
1399
1400
1401
1402
1403
1404
1405
1406
1407
1408
1409
1410
1411
1412
1413
1414
1415
1416
1417
1418
1419
1420
1421
1422
1423
1424
1425
1426
1427
1428
1429
1430
1431
1432
1433
1434
1435
1436
1437
1438
1439
1440
1441
1442
1443
1444
1445
1446
1447
1448
1449
1450
1451
1452
1453
1454
1455
1456
1457
1458
1459
1460
1461
1462
1463
1464
1465
1466
1467
1468
1469
1470
1471
1472
1473
1474
1475
1476
1477
1478
1479
1480
1481
1482
1483
1484
1485
1486
1487
1488
1489
1490
1491
1492
1493
1494
1495
1496
1497
1498
1499
1500
1501
1502
1503
1504
1505
1506
1507
1508
1509
1510
1511
1512
1513
1514
1515
1516
1517
1518
1519
1520
1521
1522
1523
1524
1525
1526
1527
1528
1529
1530
1531
1532
1533
1534
1535
1536
1537
1538
1539
1540
1541
1542
1543
1544
1545
1546
1547
1548
1549
1550
1551
1552
1553
1554
1555
1556
1557
1558
1559
1560
1561
1562
1563
1564
1565
1566
1567
1568
1569
1570
1571
1572
1573
1574
1575
1576
1577
1578
1579
1580
1581
1582
1583
1584
1585
1586
1587
1588
1589
1590
1591
1592
1593
1594
1595
1596
1597
1598
1599
1600
1601
1602
1603
1604
1605
1606
1607
1608
1609
1610
1611
1612
1613
1614
1615
1616
1617
1618
1619
1620
1621
1622
1623
1624
1625
1626
1627
1628
1629
1630
1631
1632
1633
1634
1635
1636
1637
1638
1639
1640
1641
1642
1643
1644
1645
1646
1647
1648
1649
1650
1651
1652
1653
1654
1655
1656
1657
1658
1659
1660
1661
1662
1663
1664
1665
1666
1667
1668
1669
1670
1671
1672
1673
1674
1675
1676
1677
1678
1679
1680
1681
1682
1683
1684
1685
1686
1687
1688
1689
1690
1691
1692
1693
1694
1695
1696
1697
1698
1699
1700
1701
1702
1703
1704
1705
1706
1707
1708
1709
1710
1711
1712
1713
1714
1715
1716
1717
1718
1719
1720
1721
1722
1723
1724
1725
1726
1727
1728
1729
1730
1731
1732
1733
1734
1735
1736
1737
1738
1739
1740
1741
1742
1743
1744
1745
1746
1747
1748
1749
1750
1751
1752
1753
1754
1755
1756
1757
1758
1759
1760
1761
1762
1763
1764
1765
1766
1767
1768
1769
1770
1771
1772
1773
1774
1775
1776
1777
1778
1779
1780
1781
1782
1783
1784
1785
1786
1787
1788
1789
1790
1791
1792
1793
1794
1795
1796
1797
1798
1799
1800
1801
1802
1803
1804
1805
1806
1807
1808
1809
1810
1811
1812
1813
1814
1815
1816
1817
1818
1819
1820
1821
1822
1823
1824
1825
1826
1827
1828
1829
1830
1831
1832
1833
1834
1835
1836
1837
1838
1839
1840
1841
1842
1843
1844
1845
1846
1847
1848
1849
1850
1851
1852
1853
1854
1855
1856
1857
1858
1859
1860
1861
1862
1863
1864
1865
1866
1867
1868
1869
1870
1871
1872
1873
1874
1875
1876
1877
1878
1879
1880
1881
1882
1883
1884
1885
1886
1887
1888
1889
1890
1891
1892
1893
1894
1895
1896
1897
1898
1899
1900
1901
1902
1903
1904
1905
1906
1907
1908
1909
1910
1911
1912
1913
1914
1915
1916
1917
1918
1919
1920
1921
1922
1923
1924
1925
1926
1927
1928
1929
1930
1931
1932
1933
1934
1935
1936
1937
1938
1939
1940
1941
1942
1943
1944
1945
1946
1947
1948
1949
1950
1951
1952
1953
1954
1955
1956
1957
1958
1959
1960
1961
1962
1963
1964
1965
1966
1967
1968
1969
1970
1971
1972
1973
1974
1975
1976
1977
1978
1979
1980
1981
1982
1983
1984
1985
1986
1987
1988
1989
1990
1991
1992
1993
1994
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016
2017
2018
2019
2020
2021
2022
2023
2024
2025
2026
2027
2028
2029
2030
2031
2032
2033
2034
2035
2036
2037
2038
2039
2040
2041
2042
2043
2044
2045
2046
2047
2048
2049
2050
2051
2052
2053
2054
2055
2056
2057
2058
2059
2060
2061
2062
2063
2064
2065
2066
2067
2068
2069
2070
2071
2072
2073
2074
2075
2076
2077
2078
2079
2080
2081
2082
2083
2084
2085
2086
2087
2088
2089
2090
2091
2092
2093
2094
2095
2096
2097
2098
2099
2100
2101
2102
2103
2104
2105
2106
2107
2108
2109
2110
2111
2112
2113
2114
2115
2116
2117
2118
2119
2120
2121
2122
2123
2124
2125
2126
2127
2128
2129
2130
2131
2132
2133
2134
2135
2136
2137
2138
2139
2140
2141
2142
2143
2144
2145
2146
2147
2148
2149
2150
2151
2152
2153
2154
2155
2156
2157
2158
2159
2160
2161
2162
2163
2164
2165
2166
2167
2168
2169
2170
2171
2172
2173
2174
2175
2176
2177
2178
2179
2180
2181
2182
2183
2184
2185
2186
2187
2188
2189
2190
2191
2192
2193
2194
2195
2196
2197
2198
2199
2200
2201
2202
2203
2204
2205
2206
2207
2208
2209
2210
2211

JUDGE STEIN UNITED STATES DISTRICT COURT

SOUTHERN District of **NEW YORK**

Those Certain Companies and Those Certain
Underwriters at Lloyds, London,
Subscribing Severally but not Jointly to Policy of
Insurance Certificate Number NA3471501,
as Subrogors of David Morris International Limited,

SUMMONS IN A CIVIL CASE

Plaintiff,

CASE NUMBER:

v.

6.21 CARAT DIAMOND,

Defendant-in-Rem,

JAY WALDMANN,

Claimant-Defendant,

08 CV 02006

TO: (Name and address of Defendant)

**Jay Waldmann
25 Main Street
Southampton, New York 11968**

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

**Aidan M. McCormack (AMM 3017)
Sarah Anne Kutner (SAK 6516)
Nixon Peabody LLP
437 Madison Avenue
New York, New York 10022**

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

J. MICHAEL McMAHON

CLERK

DATE

FEB 28 2008

(By) 

AO 440 (Rev. 8/01) Summons in a Civil Action

RETURN OF SERVICE		
Service of the Summons and complaint was made by me ⁽¹⁾	DATE <u>MARCH 19, 2008</u>	
NAME OF SERVER (PRINT) <u>JOSEPH A. RAMOS</u>	TITLE <u>PARALEGAL / PROCESS SERVER</u>	
Check one box below to indicate appropriate method of service		
<input type="checkbox"/> Served personally upon the defendant. Place where served: _____ _____		
<input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: _____ _____		
<input type="checkbox"/> Returned unexecuted: _____ _____		
<input checked="" type="checkbox"/> Other (specify): <u>PERSONALLY SERVED MARTIN M. BELL AN OFFICER OF BELL and COMPANY LLP, THE COMPANY AND ADDRESS DESIGNATED FOR SERVICE OF PROCESS FOR WALDMANN, INC</u> _____		
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL
DECLARATION OF SERVER		
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <p>Executed on <u>3/27/08</u> _____ Date</p> <p style="text-align: center;"><u>Joseph Ramos</u> Signature of Server</p> <p style="text-align: center;"><u>32-15 UTOPIA PKWY, FLUSHING NY 11358</u> Address of Server</p>		

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Those Certain Companies and Those Certain
Underwriters at Lloyds, London,
Subscribing Severally but not Jointly to Policy of
Insurance Certificate Number NA3471501,
as Subrogors of David Morris International Limited,

Plaintiff,

v.

6.21 CARAT DIAMOND,

Defendant-in-Rem,

JAY WALDMANN,

Claimant-Defendant,

**AFFIDAVIT OF
SERVICE**

**Case Number:
08-CV-02006**

STATE OF NEW YORK)
COUNTY OF NASSAU) ss.:

JOSEPH RAMOS, being duly sworn, deposes and says:

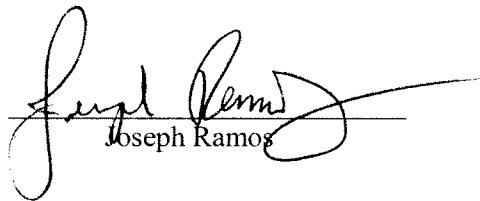
That deponent is not a party to the action, is over 18 years of age and resides in Flushing County, New York.

That on the 5th day of March, 2008, I went to 25 Main Street, Southampton, NY 11968 and made my first attempt to personally serve a true copy of the within **Civil Cover Sheet, SDNY Summons & Complaint with supporting documents, 7.1 Disclosure Statement and Individual Judge Rules**, but could not do so because the premises were locked, no one was there and the premises appeared to have been completely vacated by the tenant, Waldman, Inc. Upon researching the New York State Department of State Division of Corporations database, a process address of 15 East 26th Street, Suite 1605, New York, New York, 10010 was obtained for Waldmann, Inc. A copy of the New York State Department of State Division of Corporations print out is annexed hereto as **Exhibit "A"**.

That on the 10th day of March, 2008, I went to 15 East 26th Street, Suite 1605, New York, New York, 10010 and made my second attempt to personally serve a true copy of the within **Civil Cover Sheet, SDNY Summons & Complaint with supporting documents, 7.1 Disclosure Statement and Individual Judge Rules**, on Bell & Company LLP, the company and address designated for service of process with the New York State Department of State Division of Corporations, but could not do so because the premises had relocated. Upon researching the internet, a new address with obtained for Bell

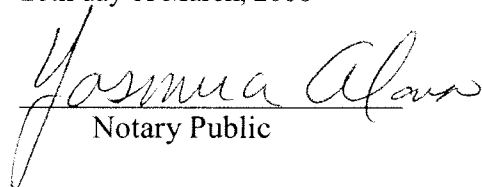
& Company LLP. A copy of the New York State Department of State Division of Corporations print out listing Bell & Company LLP, as the company and address designated for service of process is annexed hereto as **Exhibit "B"**

On the 19th day of March, 2008, I went to 350 5th Avenue, Suite 7412, New York, New York 11018 and served a true copy of the within **Civil Cover Sheet, SDNY Summons & Complaint with supporting documents, 7.1 Disclosure Statement and Individual Judge Rules**, on Martin M. Bell, CPA, (Male, White Skin, Gray Hair, 51-65 Yrs., 5'4"-5'9", 160-200 Lbs.) an officer of Bell & Company LLP, and a person of suitable age and discretion, authorized to accept service on behalf of Waldmann, Inc.



Joseph Ramos

Sworn to before me this
26th day of March, 2008



Yasmira Alonso
Notary Public

YASMIRA ALONSO
NOTARY PUBLIC, State of New York
No. 4991549
Qualified in Nassau County
Commission Expires February 3, 2010

EXHIBIT “A”

NYS Department of State

Division of Corporations

Entity Information

Selected Entity Name: WALDMANN, INC.

Selected Entity Status Information

Current Entity Name: WALDMANN, INC.

Initial DOS Filing Date: DECEMBER 16, 1996

County: NEW YORK

Jurisdiction: NEW YORK

Entity Type: DOMESTIC BUSINESS CORPORATION

Current Entity Status: ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

JUNDRICH WALDMANN
C/O BELL & COMPANY
15 E 26TH ST RM 1605
NEW YORK, NEW YORK, 10010

Chairman or Chief Executive Officer

JINDRICH WALDMANN
C/O BELL & COMPANY LLP
15 E 26TH ST STE 1605
NEW YORK, NEW YORK, 10010-1599

Principal Executive Office

WALDMANN, INC.
C/O BELL & COMPANY LLP
15 E 26TH ST STE 1605
NEW YORK, NEW YORK, 10010-1599

Registered Agent

NONE

NOTE: New York State does not issue organizational identification numbers.

[Search Results](#)

[New Search](#)

[Division of Corporations, State Records and UCC Home Page](#) [NYS Department of State Home Page](#)

EXHIBIT “B”

NYS Department of State

Division of Corporations

Entity Information

Selected Entity Name: BELL & COMPANY, INC.

Selected Entity Status Information

Current Entity Name: BELL & COMPANY, INC.
Initial DOS Filing Date: JANUARY 24, 1992
County: NEW YORK
Jurisdiction: NEW YORK
Entity Type: DOMESTIC BUSINESS CORPORATION
Current Entity Status: ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

MARTIN M. BELL
15 E. 26TH STREET
(STE. 1605)
NEW YORK, NEW YORK, 10010-1599

Chairman or Chief Executive Officer

MARTIN M. BELL
15 E. 26TH STREET
(STE. 1605)
NEW YORK, NEW YORK, 10010-1599

Principal Executive Office

BELL & COMPANY, INC.
15 E. 26TH STREET
(STE. 1605)
NEW YORK, NEW YORK, 10010-1599

Registered Agent

NONE

NOTE: New York State does not issue organizational identification numbers.

[Search Results](#)

[New Search](#)

[Division of Corporations, State Records and UCC Home Page](#) [NYS Department of State Home Page](#)

Kutner, Sarah Anne

From: Kutner, Sarah Anne
Sent: Thursday, April 10, 2008 5:47 PM
To: 'Robert Tucker'
Subject: RE: 6.21 Carat Diamond

Robert,

You may or may not know that an initial conference was scheduled to be held in the action that was filed against Mr. Waldmann in the Southern District of New York. I have adjourned the conference in the hopes that Mr. Waldmann will choose to participate in this litigation so that we can finally resolve this dispute. If Mr. Waldmann does not answer the complaint by April 25, I will be filing a default motion for which Judge Stein set a return date of May 9. I tell you this as a good faith effort to give Mr. Waldmann notice of these proceedings, as I do not have his contact information. I am mindful that you have already indicated that you do not have the authority to accept service on his behalf and have not made an appearance on his behalf.

Thank you for your time and courtesy,
Sarah

Sarah Anne Kutner

Associate

NIXON PEABODY

50 Jericho Quadrangle
Suite 300
Jericho, NY 11753-2728
P (516) 832-7561
C (516) 526-5233
F (866) 530-9407
skutner@nixonpeabody.com
www.nixonpeabody.com

The preceding e-mail message contains information that is confidential and may be protected by the attorney/client or other applicable privileges. The information is intended to be conveyed only to the designated recipient(s) of the message. If you believe that you are not an intended recipient of this message, please notify the sender at (516) 832-7561. Unauthorized use, dissemination, distribution or reproduction of this message by other than the intended recipient is strictly prohibited and may be unlawful.

From: Robert Tucker [mailto:rtucker@tuckerlatifi.com]
Sent: Tuesday, March 04, 2008 6:18 PM
To: Kutner, Sarah Anne
Subject: RE: 6.21 Carat Diamond

Dear Sarah: Mr. Waldmann lives in Düsseldorf, Germany and we do not have any authority to accept service on his behalf. I owe your firm an Affidavit of Mr. Waldmann regarding the facts of his purchase of the stone in question.

Best regards, Robert

4/23/2008

Robert L. Tucker, Esq.
TUCKER & LATIFI, LLP
160 East 84th Street
New York, NY 10028
212-472-6262
212-744-6509 fax
917-741-1414 cell
www.TuckerLatifi.com

From: Kutner, Sarah Anne [mailto:skutner@nixonpeabody.com]
Sent: Tuesday, March 04, 2008 4:58 PM
To: Robert Tucker
Subject: 6.21 Carat Diamond

Robert,

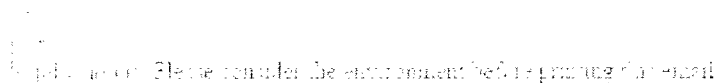
I have attached a copy of the pleadings that were recently filed in the Southern District of New York. Please let us know whether you will accept service on behalf of Mr. Waldmann. Thank you.

Sarah

Sarah Anne Kutner
Associate

NIXON PEABODY

50 Jericho Quadrangle
Suite 300
Jericho, NY 11753-2728
P (516) 832-7561
C (516) 526-5233
F (866) 530-9407
skutner@nixonpeabody.com
www.nixonpeabody.com



The preceding e-mail message contains information that is confidential and may be protected by the attorney/client or other applicable privileges. The information is intended to be conveyed only to the designated recipient(s) of the message. If you believe that you are not an intended recipient of this message, please notify the sender at (516) 832-7561. Unauthorized use, dissemination, distribution or reproduction of this message by other than the intended recipient is strictly prohibited and may be unlawful.

4/23/2008

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Those Certain Companies and Those Certain Underwriters at Lloyds, London, Subscribing Severally but not Jointly to Policy of Insurance Certificate Number NA3471501, as Subrogors of David Morris International Limited, Plaintiff, v. 6.21 CARAT DIAMOND, Defendant-in-rem, Jay Waldmann, Claimant-Defendant.	Clerk's Certificate of Default Case No. 08-CV-2006 (SHS)
---	---

I, J. MICHAEL McMAHON, Clerk of the United States District Court for the Southern District of New York, do hereby certify that this action was commenced on February 28, 2008 with the filing of a summons and complaint. *See* complaint filed at docket entry #1. Copies of the summons and complaint were served on defendant Jay Waldmann on March 19, 2008. *See* proof of service filed at docket entry #5.

I further certify that the docket entries indicate that to date, defendant Jay Waldmann has not filed an answer or otherwise responded to the complaint herein. The default of defendant Jay Waldmann in this action is hereby noted.

Dated: New York, New York
April 21, 2008

J. Michael McMahon
Clerk of the Court

By: 
Clerk

Kutner, Sarah Anne

From: Robert Tucker [rtucker@tuckerlatifi.com]
Sent: Monday, June 25, 2007 8:21 PM
To: capricci.barush@dlapiper.com
Cc: Kutner, Sarah Anne
Subject: 6.21 Carat Diamond Jay Waldmann & David Morris International Limited
Attachments: Waldmann-S Cutner ltr 6-14-07.pdf

Dear Capricci: In connection with the above-referenced matter and your firm's representation of GIA, please be advised that Sarah Kutner of Nixon Peabody, counsel for the underwriters who insured David Morris International Limited ("Morris"), and I have recently entered into negotiations to resolve the dispute over the rightful ownership of the 6.21 Carat Diamond first brought to your client for evaluation by Mr. Benny Sofer (on behalf of Mr. Waldmann) over a year ago. As demanded by Ms. Kutner in her attached letter of June 14th, we kindly request that the referenced diamond be maintained by GIA for safe keeping until this matter can be resolved.

To date, this firm has not been provided with any proof or substantiation to evidence the claim that the referenced diamond is the property of Morris and/or his underwriters.

Thank you, Robert Tucker

Robert L. Tucker, Esq.
TUCKER & LATIFI, LLP
160 East 84th Street
New York, NY 10028
212-472-6262
212-744-6509 fax
917-741-1414 cell
www.TuckerLatifi.com

5/9/2008

06/19/2007 14:03

NO.024 001

NIXON PEABODY
ATTORNEYS AT LAW

50 Jericho Quadrangle, Suite 300
Jericho, New York 11753
(516) 832-7500
Fax: (516) 832-7555

Sarah Anne Kutner
Direct Dial: (212) 940-3778
E-Mail: skutner@nixonpeabody.com

June 14, 2007

Via E-mail and Federal Express

Capricci Barush, Esq.
DLA Piper US, LLP
1251 Avenue of the Americas, 29th Floor
New York, New York 10020

Re: 6.21 Carat Diamond – Laser Registry GIA 11326214 and 14592676

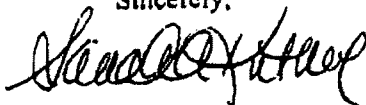
Dear Ms. Barush:

This firm represents the underwriters who insured David Morris International Limited ("Morris") in connection with the above-referenced diamond. The above-referenced diamond is now in the possession of your client, the Gemological Institute of America ("GIA"). We hereby place you, on behalf of GIA, on notice that the Morris underwriters claim ownership and possession of the above-referenced diamond.

We demand the surrender of the diamond to the Morris underwriters. We also request that GIA hold the diamond in its New York location until the dispute over the diamond's ownership is resolved.

Please contact me to acknowledge receipt of this letter and discuss the diamond's transfer. Thank you for your anticipated cooperation.

Sincerely,



Sarah Anne Kutner

cc: Robert L. Tucker, Esq.
Tucker & Latifi, LLP
160 East 84th Street
New York, New York 10028
Counsel for Jay Waldman